

LUQMAN-AU YONG SDN BHD

a

v.

EYE BEE SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR

b

HISHAMUDIN YUNUS J

[CIVIL SUIT NO: D6-103-2003]

23 APRIL 2003

CIVIL PROCEDURE: Costs - Taxation - Review by judge - Review of registrar's decision - Time - Whether application to judge for review may be made before registrar signs certificate - Rules of the High Court 1980, O. 59 r. 36(2) - Drafting omission - True construction

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This was an application by the 2nd defendant to strike out the plaintiff's application in Enclosure 52 ('encl. 52'). Enclosure 52 was an application by the plaintiff to the judge under O. 59 r. 36(2) Rules of the High Court 1980 ('RHC') to review an earlier decision of the deputy registrar made pursuant to O. 59 rr. 34 and 35 RHC. The 2nd defendant contended that encl. 52 was premature because at the time it was filed the deputy registrar had yet to issue his certificate under O. 59 r. 35(3) RHC. It was argued that an application under O. 59 r. 36(2) RHC can only be made after the registrar has issued and signed his certificate under O. 59 r. 35(3) RHC.

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Held:

[1] Although there was a drafting omission in O. 59 r. 36(2) RHC, the words "... within 14 days ..." therein obviously meant 'within 14 days after the registrar has made his decision' and **not** 'within 14 days after the registrar has signed his certificate'. Consequently, although encl. 52 was filed well before the deputy registrar signed his certificate under O. 59 r. 35(3) RHC, it was nevertheless filed within 14 days after the deputy registrar made his decision. Therefore, encl. 52 was not premature and the 2nd defendant's application was misconceived. (pp 595 f-h & 596 a-b)

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[Second defendant's application dismissed.]

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a Case(s) referred to:

Ho Wai Seng & Satu Lagi v. Johari Abas & Satu Lagi [2001] 5 CLJ 343 (*not foll*)

Legislation referred to:

Rules of the High Court 1980, O. 59 rr. 34, 35(3), 36(2)

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For the plaintiff - Raja Zurina; M/s Shaharudin Sham Sunder & Partners
For the 2nd defendant - V Ravindran; M/s Kumar Jaspal Quah & Aishah

Reported by Gan Peng Chiang

JUDGMENT

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Hishamudin Yunus J:

Enclosure 52 is an application by the plaintiff for a review by the judge of the decision of the learned deputy registrar (hereinafter referred to as the “registrar”) on a matter regarding taxation.

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The decision of the registrar, which is the subject matter of encl. 52, is the decision of the review made by him on 23 July 2002. The review made by him was pursuant to O. 59 rr. 34 and 35 of Rules of the High Court 1980.

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Enclosure 52 is made pursuant to O. 59 r. 36(2). It provides:

(2) An application under this rule for review of the Registrar’s decision in respect of any item may be made at any time within 14 days, or such longer time as the Registrar at the time when he signs the certificate or the Court at any time, may allow.

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The application that is now before me for my determination is encl. 59, which is an application by the second defendant to strike out the plaintiffs application *vide* encl. 52 on the ground that the plaintiffs application is premature. It is contended by the second defendant that the plaintiffs application is premature because at the time the application to the judge

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was made the registrar has yet to sign his certificate as required by O. 59 r. 35(3). The second defendant contends that the application to the judge under O. 59 r. 36(2) can only be made after the registrar has signed the certificate pursuant to O. 59 r. 35(3). Paragraph (3) of r. 35 of O. 59 provides:

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(3) The Registrar who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it.

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A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the Registrar.

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The second defendant submits that the words:

... within 14 days, ...

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in O. 59 r. 36(2) means within 14 days after the registrar has signed the certificate. In support of his submission, learned counsel cites *Ho Wai Seng dan Satu Lagi v. Johari bin Abas dan Satu Lagi* [2001] 5 CLJ 343.

In the case that is now for my consideration, it is not disputed that the decision of the registrar on the review was made on 23 July 2002, that a request to the registrar for the reasons of his decision pursuant to Order r. 35(3) has been made by the plaintiff on 5 August 2002 (and the reasons were given on 11 December 2002), that the application to the judge *vide* encl. 52 was made within 14 days of that decision (that is, encl. 52 was filed on 6 August 2002); and that at the time when the application to the judge was made, the registrar has not yet signed his certificate as required by O. 59 r. 35(3) (the certificate was only signed on 11 December 2002).

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In my judgment, this application by the second defendant to strike out encl. 52 must be dismissed with costs. True, the decision in *Ho Wai Seng* supports the second defendant's submission. But, with respect, I have a different opinion. In my view, with respect to the drafters of the rule, there is a slight drafting omission in para. (2) of r. 36 of O. 59 in that the subrule rule merely states "... within 14 days, ..." without going on to state whether it is within 14 days of the date of the decision of the review or otherwise. But be that as it may I think the words "... within 14 days, ..." must be interpreted to mean within 14 days of the registrar's decision on the review and not within 14 days of the signing of the registrar's certificate.

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This is because the words "... within 14 days, ..." must be read in the context of the preceding words of para. (2), namely:

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An application under this rule for review of the Registrar's decision ...

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- a* In other words, the 14-day period must relate to the registrar's decision on the review. With the greatest respect and in all humility, I wish to add here that the misunderstanding on the interpretation of para. (2) of r. 36 of O. 59 would not have arisen if the drafters of the Rules of the High Court had carefully drafted the subrule by adding after the words "... within 14 days ..." the words "... of the decision ..." so that the relevant words of the subrule would read "... within 14 days of the decision, ...".
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Since the words "... 14 days, ...", as I have held, mean within 14 days of the registrar's decision on the review, therefore, I rule that the plaintiff's application is not premature. Hence encl. 59 is misconceived.

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